

ARTICLE APPEARED
ON PAGE A-1

WASHINGTON POST
18 February 1985

Westmoreland Seeks Libel Suit's Dismissal

General's Counsel, CBS Reach Agreement

By Eleanor Randolph
Washington Post Staff Writer

Retired general William C. Westmoreland agreed yesterday to dismissal of his \$120 million libel action against CBS Inc., the network announced.

"At a news conference, general William C. Westmoreland and CBS will jointly announce the discontinuance of the Westmoreland libel suit against CBS," the network said in a statement after reports of the action began to spread.

Lawyers for CBS and Westmoreland, the commander of U.S. ground forces in Vietnam who claimed that a 1982 CBS documentary libeled him by asserting that he misrepresented enemy troop strength to his superiors, including President Lyndon B. Johnson, signed an agreement yesterday in New York to dismiss the long and complicated case, sources close to the case said.

They said that lawyers for both sides are expected to meet with U.S. District Court Judge Pierre N. Leval at 11 a.m. today to file the "stipulation of dismissal" agreement.

The agreement reportedly involves no apology or payment by CBS. These sources said Westmoreland's chief lawyer, Dan M. Burt, persuaded CBS to agree not to sue Westmoreland for the network's court costs, estimated at \$150,000 to \$250,000.

As part of the agreement, law-



WILLIAM C. WESTMORELAND
... had contested documentary

yers from both sides are expected to release a statement praising both parties in the suit and saying that the case has provided historians with voluminous documents on the crucial period in Vietnam before the Tet offensive.

"Both General Westmoreland and CBS believe that their respective positions have been effectively placed before the public for its consideration and that continuing the legal process at this stage would serve no further purpose," said the statement, drafted last night, one source said.

Continued

"CBS respects General Westmoreland's long and faithful service to his country and never intended to assert and does not believe that General Westmoreland was unpatriotic or disloyal in performing his duties as he saw them," the statement said.

"General Westmoreland respects the long and distinguished journalistic tradition of CBS and the rights of journalists to examine the complex issues of Vietnam and to present perspectives contrary to his own," it added.

According to sources close to the case, some of Westmoreland's friends, attorneys and financial backers suggested that he drop the case after testimony last week by retired Army colonel Gains B. Hawkins, who was Westmoreland's chief of Order of Battle estimates, the official rosters of enemy-troop estimates, in Vietnam.

Hawkins said on the stand that in

1967, when he told Westmoreland about higher enemy-troop estimates, the general called the new numbers "politically unacceptable." As a result, Hawkins said he ordered his intelligence officials to cut their enemy estimates, as the CBS broadcast had said.

Hawkins' testimony came less than a week after Westmoreland's former intelligence chief, retired major general Joseph A. McChristian, said Westmoreland feared in May 1967 that the new figures would "create a political bombshell" in Washington. Westmoreland denied that he had ever said "bombshell," and said he told his immediate superiors that he was concerned that the numbers might pose a public relations problem.

The trial, which began Oct. 9 in U.S. District Court in lower Manhattan, drew some of the most famous names of the Vietnam era—including former secretary of defense Robert S. McNamara, former national security affairs adviser

Walt Rostow and others—to testify for Westmoreland. Since the first of the year, however, CBS had brought a series of less-well-known military and Central Intelligence Agency officials to bolster its case.

At issue in *Westmoreland v. CBS Inc.* was whether CBS libeled the former general when its broadcast, "The Uncounted Enemy: A Vietnam Deception," accused him of suppressing higher enemy-strength intelligence in 1967 so that he could maintain support for the war.

Sources said that Westmoreland attorney Burt had been asking CBS lawyers for several weeks whether the network might want to settle the case. Told by several CBS attorneys that the network planned to take the case to the jury, Burt began negotiating with CBS lawyers over the weekend, according to sources. One source said that at first Burt wanted CBS to give reporters virtually no comment supporting the broadcast after the dismissal, but network lawyers balked.

Burt, reached in New York, said he would have no comment.

At a news conference today in New York, CBS executives plan to praise the judge, the jury and the stream of military and civilian witnesses in the trial.

Although network spokesmen said they could not comment, one source said the CBS officials will say that they believe the broadcast was "fair and accurate" and that they "continue to stand by" the reporting for the show.

Last week when CBS brought on Hawkins, Westmoreland lawyers tried but failed to have much of his testimony expunged from the record. As Westmoreland attorney David M. Dorsen began cross-examining Hawkins, the 65-year-old Mississippian made clear that he had carefully prepared for most questions and felt that his efforts to lower enemy-troop data for Westmoreland's command were "improper."

The lawsuit, filed by Westmoreland and Capital Legal Foundation, a conservative public-interest law firm, had been expected to go to the jury within a week.